

Assembly Bill No. 2416

CHAPTER 466

An act to amend Section 3047 of the Family Code, relating to child custody.

[Approved by Governor September 29, 2010. Filed with
Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2416, Cook. Child custody: parent on active military duty.

Existing law provides that a party's absence, relocation, or failure to comply with custody and visitation orders is not, by itself, sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure is the party's activation to military service and deployment out of state.

This bill would apply this provision to cases in which a party's absence, relocation, or failure to comply is due to the party's activation to military service, mobilization in support of combat or other military operation, or military deployment out of state, as defined. The bill would authorize the court to issue a temporary order for custody and visitation for the period in which the party will be deployed, mobilized, or on temporary duty, as specified, and would establish a presumption that, upon the return of that party, the order shall revert back to the custody order that was in place prior to the modification. The bill would further authorize the court to grant reasonable visitation rights to a stepparent, grandparent, or other family member if the court finds a preexisting relationship, as specified, that the visitation would facilitate the child's contact with the party who is deployed, mobilized, or on temporary duty, and the court balances the interest of the child in having visitation with the family member against the right of the parents to exercise parental authority. The bill would require the court to order an expedited hearing or allow the party who is deployed, mobilized, or on temporary duty to present evidence and participate in court-ordered custody mediation by electronic means under specified circumstances.

The people of the State of California do enact as follows:

SECTION 1. Section 3047 of the Family Code is amended to read:

3047. (a) A party's absence, relocation, or failure to comply with custody and visitation orders shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure to comply is the party's activation to military duty or temporary duty,

mobilization in support of combat or other military operation, or military deployment out of state.

(b) (1) If a party with sole or joint physical custody or visitation receives temporary duty, deployment, or mobilization orders from the military that require the party to move a substantial distance from his or her residence or otherwise has a material effect on the ability of the party to exercise custody or visitation rights, a modification of the existing custody order shall be deemed a temporary custody order, which shall be subject to review and reconsideration upon the return of the party from military deployment, mobilization, or temporary duty. If the temporary order is reviewed upon return of the party from military deployment, mobilization, or temporary duty, there shall be a presumption that the custody order shall revert to the order that was in place before the modification, unless the court determines that it is not in the best interest of the child.

(2) (A) If the court makes a temporary custody order, it shall consider any appropriate orders to ensure that the relocating party can maintain frequent and continuing contact with the child by means that are reasonably available.

(B) Upon a motion by the relocating party, the court may grant reasonable visitation rights to a stepparent, grandparent, or other family member if the court does all of the following:

(i) Finds that there is a preexisting relationship between the family member and the child that has engendered a bond such that visitation is in the best interest of the child.

(ii) Finds that the visitation will facilitate the child's contact with the relocating party.

(iii) Balances the interest of the child in having visitation with the family member against the right of the parents to exercise parental authority.

(C) Nothing in this paragraph shall increase the authority of the persons described in subparagraph (B) to seek visitation orders independently.

(D) The granting of visitation rights to a nonparent pursuant to subparagraph (B) shall not impact the calculation of child support.

(c) If a party's deployment, mobilization, or temporary duty will have a material effect on his or her ability, or anticipated ability, to appear in person at a regularly scheduled hearing, the court shall do either of the following:

(1) Upon motion of the party, hold an expedited hearing to determine custody and visitation issues prior to the departure of the party.

(2) Upon motion of the party, allow the party to present testimony and evidence and participate in court-ordered child custody mediation by electronic means, including, but not limited to, telephone, video conferencing, or the Internet, to the extent that this technology is reasonably available to the court and protects the due process rights of all parties.

(d) For purposes of this section, the following terms have the following meanings:

(1) “Deployment” means the temporary transfer of a member of the Armed Forces in active-duty status in support of combat or some other military operation.

(2) “Mobilization” means the transfer of a member of the National Guard or Military Reserve to extended active-duty status, but does not include National Guard or Military Reserve annual training.

(3) “Temporary duty” means the transfer of a service member from one military base to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(e) It is the intent of the Legislature that this section provide a fair, efficient, and expeditious process to resolve child custody and visitation issues when a party receives temporary duty, deployment, or mobilization orders from the military.